

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARY HORN and FREDERICK HORN, SR.,
Individually and as Beneficiaries of the Estate of
FREDERICK HORN, JR.,

Case No. 10-CIV-6082

Plaintiffs,

NOTICE OF MOTION
TO DISMISS

- against -

BANK OF AMERICA CORP., BANK OF
AMERICA GROUP BENEFITS PROGRAM
("THE PLAN"), FMR, LLC and METLIFE, INC.,

Defendant.

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PLEASE TAKE NOTICE that the Defendants Bank of America Corporation (hereinafter
"Defendant" or "Bank") and FMR, LLC ("Fidelity") (collectively "Defendants") will move
before the United States District Court for the Southern District of New York, 500 Pearl Street,
New York, New York, for an Order, pursuant to the Employee Retirement Income Security Act
of 1974, 29 U.S.C. § 1001, for dismissal on all counts of the Plaintiffs' Complaint, and for
whatever further relief that this Court may deem just and proper. Such motion shall be served
and filed by November 8, 2010; Plaintiff's opposition shall be served and filed by December 6,
2010; Defendants' reply shall be served and filed by December 13, 2010; and the motion shall be
argued on January 7, 2011 at 4:00 p.m.

Dated: New York, New York
November 8, 2010

Respectfully submitted,
Defendants,

BANK OF AMERICA CORPORATION
and FMR, LLC,
By their attorneys,

/s/ Gina D. Wodarski
Gina D. Wodarski, Esq. (*pro hac vice*)
Edwards Angell Palmer & Dodge LLP

111 Huntington Avenue
Boston, MA 02199
(617) 239-0100

and

/s/ Jonathan B. Bruno
Jonathan B. Bruno, Esq.
Deborah M. Zawadzki, Esq.
KAUFMAN BORGEEST & RYAN LLP
120 Broadway, 14th Floor
New York, NY 10271
(212) 980-9600

To: Jeffrey W. Padilla, Esq.
Padilla & Associates, PLLC
Attorneys for Plaintiffs
845 Third Avenue, 6th Floor
New York, NY 10022

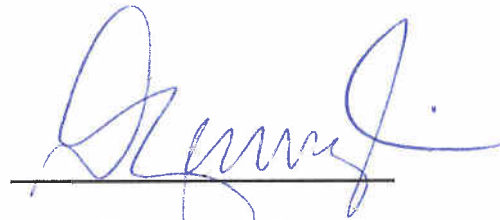
Michael Bernstein, Esq.
Sedgwick Deter Moran & Arnold, LLP
Attorneys for Defendants
BANK OF AMERICA GROUP BENEFITS
PROGRAM and METLIFE, INC.
125 Broad Street, 39th Floor
New York, NY 10004

CERTIFICATION

I hereby certify that on November 8, 2010, I caused the above Notice of Motion to Dismiss Plaintiffs' Complaint, to be served via ECF, upon:

Jeffrey W. Padilla, Esq.
Padilla & Associates, PLLC
Attorneys for Plaintiffs
845 Third Avenue, 6th Floor
New York, NY 10022

Michael Bernstein, Esq.
Sedgwick Deter Moran & Arnold, LLP
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Deborah M. Zawadzki